



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP- 172325

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**PRELIMINARY RECITALS**

On February 26, 2016, the above petitioner filed a hearing request under Wis. Stats., § 49.45, to challenge a decision by the Waukesha County Health and Human Services regarding Medical Assistance. The hearing was held on April 12, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request for a backdate of Family Care benefits to October 1, 2015.

There appeared at that time and place, the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services

[REDACTED]

Waukesha County Health and Human  
Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) was a resident of Waukesha County.

2. Petitioner was admitted to [REDACTED] assisted living in May, 2015. He remained at the facility until at least February, 2016.
3. On August 19, 2015, the Petitioner submitted an application for Family Care.
4. On September 22, 2015, the agency determined the Petitioner was asset ineligible.
5. On December 30, 2015, a second application for Family Care was submitted on behalf of the Petitioner. There was no request for a backdate on the application.
6. On January 12, 2016, the agency requested verification. The due date for the requested verification was January 29, 2016. On January 29, 2016, the Petitioner's representative requested an extension on the due date. The agency granted an extension to February 10, 2016.
7. On February 5, 2016, the agency received all requested verification and proof of spend-down from the Petitioner. The case was pended for an enrollment date from the ADRC.
8. On February 12, 2016, the agency received an enrollment date of February 10, 2016 from the ADRC. The Petitioner's representative signed an acknowledgement that the program start date was February 10, 2016. The Petitioner enrolled with Care Wisconsin MCO.
9. On February 15, 2016, the agency issued a Notice of Decision to the Petitioner.
10. On February 29, 2015, the agency issued a Notice of Decision to the Petitioner's representative informing her that the Petitioner was approved for Family Care effective April 1, 2016 with a monthly cost share of \$716.
11. Care Wisconsin provided no services to the Petitioner between October, 2015 and January, 2016.
12. Petitioner has an outstanding bill with [REDACTED] assisted living of approximately \$22,000 for room and board for the period of May, 2015 – February, 2016.
13. On February 26, 2015, the Petitioner's representative filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate (also called nursing home and non-nursing home). The process contemplated for an applicant is to test his functional eligibility, then his financial eligibility, and if he meets both standards, to certify him as eligible. Then he is referred to a Managed Care Organization (MCO) for enrollment in the MCO. See Wis. Admin. Code, §§DHS 10.33 – 10.41. The MCO then drafts a service plan using MCO selected providers, designing a care system to meet the needs of the person, and the person executes the service plan. At that point the person's services may begin.

With regard to the start date, Wis. Admin. Code, §DHS 10.36(1), provides that a person who meets all conditions of eligibility is entitled to enroll in an MCO. §DHS 10.36(2) provides that entitlement to the FC benefit first applies on the effective date of the contract between the MCO and the applicant. Notably, §DHS 10.36(3) provides that an eligible person may purchase services privately from the MCO "while waiting for enrollment." There is no provision in the rules for backdating MCO responsibility prior to enrollment. Until enrollment the person must privately pay.

In this case, the MCO did not begin providing services to the Petitioner until the enrollment date in February, 2016. Therefore, the agency properly denied the Petitioner's request to backdate the Petitioner's enrollment to October 1, 2015.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's request to backdate the Petitioner's enrollment in Family Care to October 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

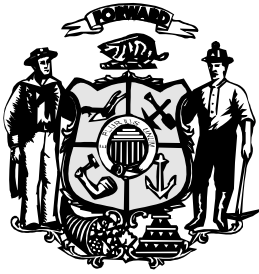
### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of July, 2016

\s \_\_\_\_\_  
Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 6, 2016.

Waukesha County Health and Human Services  
Office of Family Care Expansion  
Health Care Access and Accountability